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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1179

LAWRENCE J. STOCKLER, on his own behalf and on
behalf of those similarly situated,

Appellant,

vs.

STATE OF MICHIGAN, DEPARTMENT OF TREASURY
and STATE TREASURER,

Appellees.

ANSWER TO MOTION TO DISMISS OR AFFIRM

On Appeal from the Supreme Court of the State of Michigan

Law Offices of Lawrence J. Stockler
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Plaintiff-Appellant, makes this his Answer to Appellees' Motion to Dismiss or Affirm and states as follows:

1. That the appeal does present a substantial question, as is more fully set forth in the Jurisdictional Statement filed heretofore.
2. That the opinion of the Michigan Court of Appeals is not conclusive.

3. That, in fact, the matter brought before this Court on appeal is extremely important and quite substantial.

I - ARGUMENT

Appellant has already stated quite fully in its Jurisdictional Statement that the Federal question brought before this Court is quite substantial. The Single Business Tax is levied and imposed upon THE PRIVILEGE OF DOING BUSINESS AND NOT UPON INCOME, MCLA 208.31 (4). Despite this legislative enactment, Appellees by sleight of hand would have this Court believe that the Single Business Tax is, in fact, an income or activities tax (which Appellant would submit is constitutional). Appellant makes no comment regarding the Steward Machine Co. and Carmichael cases as set forth in Appellees' Motion to Dismiss except to note that the upheld taxes involved were employment taxes. This Court in Steward Machine Co. stated quite clearly that the employment tax was on the business activity of employing employees and not a tax on engaging in business. Similarly, in Carmichael, this Court referred to the activity involved, not the rights and privileges themselves.

Appellant submits that the Single Business Tax is like those struck down in Murdock, Grosjean and Harper and does burden Appellant's right to engage in business as protected by the Fifth and Fourteenth Amendments. As stated repeatedly, Appellant does not contend that business activities may not be taxed. However, the Michigan legislature has quite clearly stated that the Single Business Tax is a tax upon the privilege of doing business and not upon income. It is not a tax upon the "doing of business" and imposed upon all persons with business

activities within the state, as set forth on Page 5 of the Motion to Dismiss. It is a tax, however, upon the privilege of doing business, as is set forth in the statute itself. Further, the fact that this tax replaced a variety of state taxes theretofore imposed upon business is irrelevant -- it is the constitutionality of this tax which is in question. Appellees' attorneys, despite their attempts, may not magically convert the tax from an imposition upon the privilege of doing business into a tax upon income or activity.

This is clear as is set forth in the Jurisdictional Statement that a substantial Federal question is presented.

CONCLUSION

WHEREFORE, Appellant respectfully submits that the question presented to this Court is substantial, and probable jurisdiction should be noted; Further, that Appellees' Motion to Dismiss or Affirm should be denied.

Respectfully submitted,

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Dated: March 24, 1978